

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SHANTEL McCOY, an individual,

Plaintiff,

v.

CLARK COUNTY, a political subdivision;
DOES 1 through 10; ROE ENTITIES 11
through 20, inclusive jointly and severally,

Defendants.

Case No. 2:20-cv-01331-KJD-NJK

**ORDER GRANTING DEFENDANT'S
MOTION FOR PARTIAL DISMISSAL**

Before the Court is Defendant's Motion for Partial Dismissal of Plaintiff's Complaint (ECF #5). Plaintiff did not respond, and Defendant filed a Notice of Non-opposition (ECF #7).

I. Factual and Procedural Background

Plaintiff Shantel McCoy ("McCoy") filed the instant action against her employer Defendant Clark County in state court in June 2020. (ECF #5, at 2). Clark County then removed the action to this Court. Id. According to the complaint, McCoy requested time off under the Family and Medical Leave Act ("FMLA") from February 2019 through October 2019. Id. McCoy alleges that Clark County harassed and retaliated against her for taking FMLA leave. Id. Around October 2019, the hostility and mistreatment became so severe that McCoy was constructively terminated. Id. McCoy alleges that one of her supervisors interfered with her FMLA leave by leaving work in her queue, assigning her new work while she was out, failing to assign work to other employees, and demanding that her work be done immediately upon her return. (ECF #1-1, at 4). McCoy asserts that she is entitled to lost wages, lost pension benefits, and lost vacation and sick pay. Id. The complaint lists three causes of action: FMLA interference, violation of 42 U.S.C. § 1983, and wrongful termination. Id. at 5–9.

Clark County filed a motion for partial dismissal, arguing that McCoy's third cause of

1 action must be dismissed because Nevada law does not recognize an action for wrongful
 2 termination when a plaintiff has an adequate statutory remedy. (ECF #5, at 4). Clark County
 3 argues that wrongful termination is a tort designed to fill a gap when no statutory remedy is
 4 available, and that McCoy has a statutory remedy through the FMLA because her claim is based
 5 on Clark County's FMLA violation. Id. at 5. McCoy did not respond to the motion.

6 II. Legal Standard

7 Under Rule 8, a pleading must contain "a short and plain statement of the claim showing
 8 that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). A complaint does not require
 9 "detailed factual allegations," but "requires more than labels and conclusions, and a formulaic
 10 recitation of the elements of a cause of action will not do." Bell Atlantic Co. v. Twombly, 550
 11 U.S. 544, 555 (2007). "To survive a motion to dismiss, a complaint must contain sufficient
 12 factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft
 13 v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 557). All "[f]actual
 14 allegations must be enough to raise a right to relief above the speculative level." Twombly, 550
 15 U.S. at 555. While the court "must take all of the factual allegations in the complaint as true, we
 16 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" Iqbal, 556
 17 U.S. at 678 (quoting Twombly, 550 U.S. at 555). "When the claims in a complaint have not
 18 crossed the line from conceivable to plausible, the complaint must be dismissed." Hendon v.
 19 Geico Ins. Agency, 377 F.Supp.3d 1194, 1196 (D. Nev. 2019). Local rules state that a party's
 20 failure to respond to a motion to dismiss constitutes a consent to the granting of the motion. See
 21 LR 7-2(d).

22 III. Analysis

23 Clark County argues that Nevada does not permit a wrongful termination claim when a
 24 plaintiff has an adequate statutory remedy. Indeed, a court will consider two requirements when
 25 analyzing a wrongful termination claim: "(1) whether the employer violated strong and
 26 compelling Nevada public policy, and (2) . . . whether there is an adequate statutory remedy."
 27 Errico v. Fed-Ex Freight, Inc., No. 2:10-cv-01872-RLH, 2011 WL 1770861, at *3 (D. Nev. May
 28 9, 2011). McCoy's complaint alleges violations of the FMLA and all of her causes of action are

1 related to those violations. The FMLA provides a statutory remedy. As such, the Court finds that
 2 McCoy has an adequate statutory remedy with her FMLA claim and her wrongful termination
 3 claim must be dismissed.

4 “An employer commits a wrongful termination (primarily known in Nevada
 5 jurisprudence as tortious discharge) ‘by terminating an employee for reasons [that] violate public
 6 policy.’” Sanders v. Sodexo, Inc., No. 2:15-cv-00371-JAD-GWF, 2015 WL 4477697, at *3 (D.
 7 Nev. July 20, 2015) (quoting D’Angelo v. Gardner, 819 P.2d 206, 212 (Nev. 1991)). Public
 8 policy may be violated when an employee is terminated for “(1) refusing to violate the law, (2)
 9 performing jury duty, (3) filing a workers’ compensation claim or seeking industrial insurance,
 10 (4) refusing to work in unreasonable and dangerous conditions, and (5) whistle blowing.” Id.
 11 (internal citations omitted). McCoy’s case is analogous to the Sanders case which did not “fall
 12 into any of these recognized public-policy exceptions.” Id. Instead, McCoy’s claim arises from
 13 her FMLA allegations. Like the plaintiff in Sanders, McCoy has “a statutory vehicle for [her]
 14 wrongful-termination allegations: an FMLA claim.” Id. at 4. McCoy’s complaint is replete with
 15 references to Clark County’s FMLA violations. There is a section outlining the FMLA
 16 violations, the section outlining civil rights violations focuses on FMLA violations, and the
 17 wrongful termination cause of action, which re-alleges the previous allegations of FMLA
 18 violations, begins by stating the “Plaintiff exercised her right to FMLA leave.” According to the
 19 complaint, all of McCoy’s causes of action arise from Clark County’s alleged FMLA violations.

20 The FMLA provides an adequate statutory remedy that allows a plaintiff to recover
 21 “damages equal to the amount of any wages, salary, employment benefits, or other compensation
 22 denied or lost to such employee by reason of the violation.” 29 U.S.C. § 2617(a)(1)(A)(i)(I). The
 23 statute also permits recovery of interest, liquidated damages, and equitable relief. Id. at
 24 § 2617(a)(1). McCoy will be able to recover for her alleged damages under the FMLA. Plaintiffs
 25 are only entitled to pursue an action for wrongful termination against an employer when “no
 26 comprehensive statutory or other tort remedy [is] available to compensate” them. Gardner, 819
 27 P.2d at 218. McCoy has such a statutory remedy available to her.

28 Because McCoy has a statutory remedy available to her and she consents to the granting

1 of Clark County's motion, McCoy's third cause of action for wrongful termination is dismissed.

2 IV. Conclusion

3 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Partial Dismissal
4 (ECF #5) is **GRANTED**.

5 Dated this 8th day of March, 2021.

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8 Kent J. Dawson
9 United States District Judge
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